

ORIGINAL
RECEIVED

JUL - 9 1992

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)

Central Florida Educational)
Foundation, Inc., et al.)

MM Docket No. 92-33
File Nos. BPED-881207MA,
et al.

)
For Construction Permit for)
a New Noncommercial)
Educational)
FM Station (Union Park,)
Conway, Mims, Oak Hill and)
Lake Mary, Florida))

ORIGINAL
FILE

To: The Honorable Edward J. Kuhlmann
Administrative Law Judge
(Stop Code 0900)

OPPOSITION TO PETITION FOR LEAVE TO AMEND

First Media Corporation ("FMC"), licensee of
Television Station WCPX-TV, a CBS affiliate on Channel 6,
Orlando, Florida, by its attorneys, hereby submits its
Opposition to the Petition for Leave to Amend filed on July
1, 1992 by Mims Community Radio, Inc. ("Mims"), an applicant
in the above-referenced comparative proceeding.

The Hearing Designation Order issued in this
proceeding on March 10, 1992 specified that Mims would
operate a new noncommercial educational FM station to serve
Oak Hill, Florida on Channel 202C1 from a location on the
existing tower of WPGS(AM). However, the amendment just
filed by Mims on July 1, 1992 proposes a new transmitter
site within thirty miles of WCPX-TV and a new frequency,

No. of Copies rec'd
List A B C D E

0+6

Channel 204C3. These changes require Mims to comply with the terms of Section 73.525 of the FCC's rules governing Channel 6 protection. This Mims has not done.

According to the attached Engineering Statement prepared by Kevin T. Fisher of Smith and Powstenko, as supplemented by the letter dated July 8, 1992 from Robert K. Diehl, Chief Engineer of WCPX-TV, the interference study submitted by Mims with its amendment violates Section 73.525. First, Mims analyzes the number of persons contained within the predicted interference area using outdated data. The FCC rule requires the use of the most recently published U.S. Census of Population. The data used by Mims is from 1986, and claimed to be the "latest census data available." However, population data from the 1990 census was available to Mims at the time it filed its amendment. In fact, the 1990 data shows a considerable increase in the population of the predicted interference area calculated by Mims. Mims' underestimation is critical since the 1990 figures show that a greater number of people will lose their CBS network service on Channel 6 than was represented by Mims.

The second error contained in the Mims interference study underestimates the size of the area which would be affected by WCPX-TV reception problems. Mims calculated the WCPX-TV field strength by using an ERP of 100

kilowatts. However, this fails to take into account the fact that WCPX-TV is authorized to operate with a directional antenna. Therefore, the actual ERP towards Mims' proposed facility is substantially less than 100 kW. Consequently, Mims' interference study overestimates WCPX-TV's predicted field strength in the affected area. Thus, the interfering signal from Mims' proposed facility extends further than what is shown in the Mims amendment.

Not only does the interference study fail to comply with Section 73.525 but the implementation of the Mims FM station on Channel 204C3 would prevent WCPX-TV from ever changing to a circularly polarized antenna. FMC is currently exploring the possibility of making just such a change which would improve the station's coverage in the fast-growing Orlando area. However, grant of the Mims proposal would preclude WCPX-TV from taking such a service-enhancing measure.

Accordingly, FMC urges the FCC to deny the Petition for Leave to Amend filed by Mims due to the harmful impact that would result from the loss of service and

objectionable interference caused to viewers of WCPX-TV by
Mims' operation from its proposed new site.

Respectfully submitted,

FIRST MEDIA CORPORATION

By: Nancy L. Wolf
Nancy L. Wolf
D'wana R. Speight

Its Attorneys

DOW, LOHNES & ALBERTSON
1255 Twenty-third St., N.W.
Suite 500
Washington, D.C. 20037
(202) 857-2500

July 9, 1992

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of FIRST MEDIA CORPORATION, licensee of Television Station WCPX-TV, Channel 6 in Orlando, Florida, in support of its Opposition to the amendment filed by Mims Community Radio, Inc. (Mims), an applicant for a new noncommercial FM station in Oak Hill, Florida.

In its original application (BPED-891127MD), Mims specified operation on Channel 202C1 from a site within 10 miles of WCPX-TV. That application became mutually exclusive with other proposals for Channel 202 in the same area, and they all are designated for hearing under MM Docket No. 92-33. Mims has filed a Petition For Leave to Amend its application to now specify operation on Channel 204C3 from a new site, located 30 miles from WCPX-TV.

In the referenced amendment, an interference study was performed to determine the WCPX-TV viewing area to be affected by the proposed noncommercial FM operation. A horizontal ERP of 0.625 kw was used in the study for the FM facility. Since the calculated area of interference to WCPX-TV was determined by Mims to contain less than 3000 people (based upon the 1986 U. S. Census update), the applicant increased the ERP by a factor of 40 and specified operation in the vertical plane only.

The interference study contains an error which underestimates the area and population which will be afflicted with WCPX-TV reception problems. In Exhibit E-7 of the aforementioned amendment, the WCPX-TV field strength is calculated based upon an assumed ERP of 100 kw. In actuality, WCPX-TV is authorized to operate with a directional antenna, and the ERP toward the

proposed FM station is significantly less than 100 kw. As a result, the predicted field strength of WCPX-TV in the affected area is less than that calculated by Mims, and the corresponding interfering signal from the FM station extends further than that reported in the amendment. In addition, the 1990 U. S. Census, which provides more recent population figures for the affected area than provided in Mims' amendment, shows a significant increase in population in the area of interest.

Therefore, Mims has understated the size of its proposed interference area by miscalculating the WCPX-TV signal strength, and has thus misrepresented the number of people within that area. Additionally, Mims violates the intent of Section 73.525(e)(2) of the FCC's Rules, as well as underestimates the affected population further, by not employing the most recently available U. S. Census data.

Lastly, Mims' ERP conversion of 0.625 kw horizontal to 25 kw vertical is predicated on the fact that WCPX-TV presently operates with an antenna which is horizontally polarized. Should WCPX-TV ever elect to operate with a circularly polarized antenna, the predicted interference from the noncommercial FM facility would increase substantially and affect a tremendous number of WCPX-TV viewers.

For the reasons stated above, it is believed that the operation proposed by Mims will have a greater deleterious effect on the viewers of WCPX-TV than stated in the Mims amendment. Therefore, it is in the public's interest that the amendment be dismissed.

A F F I D A V I T

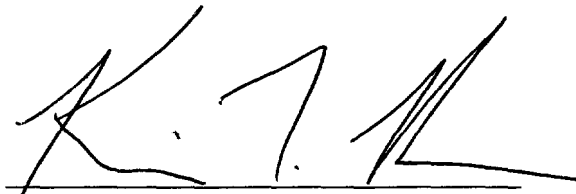
CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

Kevin T. Fisher, having been duly sworn, deposes and says that:

1. He is a broadcasting consultant practicing in the City of Washington, District of Columbia; he is an associate of the firm of Smith and Powstenko; and his qualifications are a matter of record before the Federal Communications Commission.

2. The firm of Smith and Powstenko has been retained by FIRST MEDIA CORPORATION, licensee of WCPX-TV, Channel 6 in Orlando, Florida, to prepare the attached Engineering Statement with regard to an amendment filed by one of the applicants in MM Docket No. 92-33.

3. The foregoing statements and the attached Engineering Statement, which was prepared by him, are true and correct to the best of his knowledge and belief.



KEVIN T. FISHER

Subscribed and sworn to before me this 9TH day of JULY, 1992


NOTARY PUBLIC, D. C.

My Commission Expires October 14, 1996



July 8, 1992

Ms. Nancy Wolfe, Esq.
Dow, Lohnes & Albertson
1255 Twenty-third Street
Washington, D.C. 20037

Dear Ms. Wolfe,

WCPX wishes to prevent Mims Radio from going on the air at their proposed 88.7 MHz, 25 KW Vertically polarized signal within WCPX's grade "A" contour.

WCPX-TV, operating on Channel 6, has been broadcasting in Central Florida in excess of thirty years. Mims application states that their projected interference contour will affect less than 3,000 Ch 6 viewers. This is based on their assumption that WCPX's antenna pattern is circular, when in fact it is a directional pattern. We are directional to provide signal protection to WCIX, Channel 6 in Miami.

In reality, the presently proposed location of Mims transmitter is positioned in a pattern null, between two lobes. This would make the WCPX signal strength lower, which in turn would make the Mims projected interference contour larger, which would raise the number of people who would have Ch 6 interference.

In addition, Mims used census figures from 1988. The 1990 census figures are available, and show a larger population. We are now in the middle of 1992, in an area that has a growing population, so these population figures are quite a bit larger than Mims claims in their application.

I charge that Mims engineering is in error and they are under estimating the cases of interference that they will be causing WCPX viewers.

WCPX wishes to protect all of its viewers, whatever the number. It is common knowledge that the spectrum gets tighter every day, and the difficulty of finding a frequency is increasing and in some cases impossible. So is protecting the frequency that you already have. Mims is only one of several NCE FM's in WCPX's viewing area, so I have had experience with audience erosion. The installation of filters does a fair job, but does not solve all cases, especially where "blanketing" is occurring. Many viewers don't understand what the problem is or who to contact. They simply switch to another channel, and never watch us again.

Experience has also shown me that after an FM station has been on the air for a few months, and the new has worn off, there is a realization of the work and expense involved in solving their induced interference problem and cases go unsolved. Pretty soon the filter installations fall into the category of "The road to Hell is paved with good intentions". It simply is a poor solution to the problem, and WCPX loses viewers.

Also, if Mims goes on the air at 25 KW, utilizing vertical polarization, this will probably block WCPX from the possibility of going to television circular polarization, which is being presently considered.

I feel that a grant of this license would not be in the public interest in that more television viewers would be affected with interference problems than would be listeners of 88.7.

I hope that the Commission will give strong consideration of the harm granting this license will do to WCPX's viewing audience.

Respectfully,

A handwritten signature in cursive script that reads "Robert K. Diehl".

Robert K. Diehl
Chief Engineer

CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 9th day of July, 1992, I have caused to be delivered by U.S. mail, postage-prepaid, except where otherwise noted, a copy of the foregoing "Opposition to Petition for Leave to Amend" to the following:

*The Honorable Edward J. Kuhlmann
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 220
Stop Code 0900
Washington, D.C. 20554

*James Shook, Esq.
Hearing Division, Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Stop Code 1800C4
Washington, D.C. 20036

Joseph E. Dunne, III, Esq.
May & Dunne, Chartered
1000 Thomas Jefferson Street, N.W.
Suite 520
Washington, D.C. 20007

Stephen C. Simpson, Esq.
1090 Vermont Avenue, N.W.
Suite 800
Washington, D.C. 20005

Gary S. Smithwick, Esq.
Smithwick and Belendiuk, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036

James L. Oyster, Esq.
Law Offices of James L. Oyster
Route 1, Box 203A
Castleton, Virginia 22716

A. Wray Fitch, III, Esq.
Gammon and Grange
7th Floor
8280 Greensboro Drive
McLean, Virginia 22102-3807


Tammi A. Foxwell

*Via Hand Delivery.